

Statutory Sources

A large category of State boards can be found listed directly in the statutes. Specifically, if a board exercises executive functions, the constitutional requirement of separation of powers prevents a member of the General Assembly from serving on the board or commission. State ex rel. Wallace v. Bone, 304 N.C. 591, 286 S.E. 2d 79 (1982). If a statute requires the General Assembly to appoint individuals to serve on one of these executive agency boards, G.S. §120-121 requires the appointment to be made by passage of a bill. Section 120-123 provides a list of more than 70 boards for which no members of the General Assembly may serve because these boards exercise executive powers. **Attachment E**. As discussed more fully below, all of the boards listed in G.S. §120-123 *should be* non-advisory State boards and are therefore likely to be covered under the Act.⁵

Chapters 143A “Executive Organization Act of 1971” and 143B “Executive Organization Act of 1973” both provide lists of the State’s principal and executive departments and include definitions for agency, board, commission, etc. that are helpful (but not conclusive) in a situation where the nature of a board is not clear. See G.S. §§143A-3 and -11; G.S. §§143B-2 and -3 in **Attachment F**. These lists include those agencies under the control of the Governor as well as those headed by elected officials (*e.g.*, Treasurer, Auditor, Attorney General, Secretary of State, and others).

Other helpful definitions are found in Chapter 143, Article 2B which discusses “Notice of Appointments to Public Offices.” **See Attachment G**. Section 143-47.6(1) defines “appointing authority” as the Governor, Chief Justice, Lt. Governor, Speaker, President Pro Tem, members of the Council of State, heads of executive departments of State government, the Board of Governors of the University of North Carolina, and any other person or group authorized by law to appoint to a public office. “Public office” is defined to include “appointive membership on any State commission, council, committee, board, including occupational licensing boards . . . , boards of trustees [for the UNC system and state community colleges]. . . and any other *State agency* created by law, where the appointee is entitled to draw subsistence, per diem compensation, or travel allowances” paid from State funds. The appointee may not receive a salary for the appointment. G.S. §143-47.6(2). The appointing authorities are required to file a written notice of such appointments with the Governor, Secretary of State, the Legislative Library, the State Library, and the State Controller within 30 days of an appointee’s acceptance of the appointment. G.S. §143-47.7. The appointment notices offer an excellent means of identifying State boards.

⁵ The statute is not dispositive because drafters of bills occasionally require passage of a bill to make appointments to a board that is purely advisory either because of a “misunderstanding or because an early draft had executive functions and the appointment procedure was not changed when the executive functions were deleted.” Gerry Cohen, “Separation of Powers: Boards and Commissions” (undated) 2. A review of G.S. § 120-123 also confirms that the statute has not been updated to identify boards that have been repealed and to include new boards that should be on the list.